

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK PELFREY,

Plaintiff

v.

C-1-10-159

COMMISSIONER OF SOCIAL
SECURITY,

Defendant

This matter is before the Court upon the Report and Recommendation of the United States Magistrate Judge (doc. no. 17) and plaintiff's objections thereto (doc. no. 18). Plaintiff, a Disability Insurance Benefits claimant, brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the final decision of the defendant denying plaintiff's application for disability insurance benefits. The Magistrate Judge concluded that the defendant's decision denying plaintiff disability benefits is supported by substantial evidence in the record and recommended that the decision of the Commissioner be affirmed and this case be dismissed on the docket of this Court.

I.

Plaintiff filed his application for disability insurance benefits (DIB) on April 5, 2006 alleging a disability onset date of October 23, 2005. Plaintiff's application was denied initially and upon reconsideration. Plaintiff requested and was granted a *de novo* hearing before an Administrative Law Judge (ALJ). The hearing took place on October 24, 2008. Plaintiff was represented by counsel, appeared and testified before ALJ James S. Quinlivan. Additional evidence was submitted following the hearing and a supplemental hearing was held May 20, 2009. In addition to plaintiff, Vocational Expert, Dwight McMillion appeared and testified. On June 2, 2009, the ALJ issued a decision denying plaintiff's DIB application. Plaintiff's request for review by the Appeals Council was denied, making the decision of the ALJ the final administrative decision of the Commissioner.

II.

Plaintiff makes the following objections to the Report and Recommendation. Plaintiff objects to the Magistrate Judge's finding that the ALJ's RFC determination is accurate. Plaintiff's doctor, Dr. Jerrel H. Boyer, D.O., had restricted him to a 10-pound weight limit, but the Magistrate found this to be a temporary limitation. Plaintiff argues that the record never reflects an increase in that limitation by plaintiff's doctor. Further, the Magistrate dismissed the argument that the 10-pound weight limitation would eliminate all work above the sedentary level. This argument was not addressed at all by the Magistrate. Given the 10-pound weight restriction, plaintiff argues he is entitled to an RFC limited to sedentary work. Plaintiff argues that the Magistrate Judge did not accurately consider plaintiff's radiculopathy in assessing his RFC.

Plaintiff also objects to the Magistrate Judge's finding that plaintiff's mental limitations were accurately considered by the ALJ and that the ALJ properly considered plaintiff's pain and credibility.

Judicial review of the defendant's decision is limited in scope by 42 U.S.C. § 405(g). The Court's sole function under the statute is to determine whether there is substantial evidence to support the defendant's findings of no disability. The defendant's findings should stand, if, after a review of the record in its entirety, the Court finds that the decision is supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Mullen v. Sec. of HHS*, 667 F.2d 524 (6th Cir. 1981), *cert. denied* 461 U.S. 957 (1983).

Upon a *de novo* review of the record in light of plaintiff's objections, the Court finds that the Magistrate Judge has accurately set forth the controlling principles of law and properly applied them to the particular facts of this case and agrees with the Magistrate Judge that the defendant's decision denying plaintiff disability benefits is supported by substantial evidence in the record.

Accordingly, the Court ADOPTS AND INCORPORATES BY REFERENCE the Report and Recommendation of the United States Magistrate Judge. The decision of the Commissioner is AFFIRMED.

This case is TERMINATED on the docket of this Court.

IT IS SO ORDERED.

s/Herman J. Weber
Herman J. Weber, Senior Judge
United States District Court